

**Office of Chief Counsel
Internal Revenue Service
memorandum
CC:TEGE:EOEG:EO1:TEdlund**

date: September 10, 2008

to: Judith Kindell, IRS, TEGE

from: Taina Edlund
Branch Chief
TEGE

subject: Estimated Tax Penalties

I'm enclosing P&A's advice to us with respect to tax penalties, including the estimated tax penalty. If you have any questions. Please let me know.

PMTA : 01979

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PA:BR:1:TSheppard
[CASE-MIS number]

UILC: 6655.00-00

date: September 04, 2008

to: Tatiana L. Belenkaya
General Attorney
(Tax Exempt & Government Entities)

from: James Coffey Gibbons
Branch Chief
(Procedure & Administration)

subject: TEGE Exempt Organization's Voluntary Compliance Program

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

FACTS

The TEGE Exempt Organization's Voluntary Compliance Program is designed to address the issue of non-compliance with the filing of returns required under section 6033(a)(1) (Forms 990, 990-EZ, 990-PF). The Voluntary Compliance Program is in the process of drafting a revenue procedure that will allow the non-compliant tax-exempt organizations a limited ability to file Form 990-T, certain employment tax returns, and certain information returns (Form W-2, Form 1099-MISC and Form 1099-R).¹ The Voluntary Compliance Program is being designed to provide administrative relief from the following penalties (barring subsequent discovery of fraud, misrepresentation of a material fact, or omission of material facts):

- late filing (sections 6651(a)(1) and 6652(c))
- late payment (§ 6651(a)(2)),
- failure to pay estimated tax (§ 6655),
- failure to deposit (§ 6656), or
- failure to file information returns (§§ 6721 and 6722).

The Voluntary Compliance Program will require the full payment of tax and interest.

¹ A draft of the Voluntary Compliance Program's proposed revenue procedure has not been provided for our review.

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ISSUES

1. With the exception of the section 6655 addition to tax, whether the additions to tax and penalties noted above can be waived under the Voluntary Compliance Program.
2. Whether the section 6655 addition to tax can be waived under the Voluntary Compliance Program.

LAW AND ANALYSIS

Generally, relief from additions to tax and penalties falls into four separate categories: reasonable cause, administrative waivers, statutory exceptions, and corrections of Service error. Given the limited facts that have been provided, it appears that there are no statutory exceptions that are applicable to the waivers of the additions to tax and penalties at issue, nor does it appear that there are corrections of Service error involved.

With the exception of the section 6655 addition to tax, whether the additions to tax and penalties noted above can be waived under the Voluntary Compliance Program.

With the exception of the section 6655 addition to tax for failure to pay corporate estimated income taxes, the Internal Revenue Code specifically provides for a reasonable cause exception in the case of each of the additions to tax and penalties at issue in the Voluntary Compliance Program. Reasonable cause relief is generally granted when the taxpayer exercises ordinary business care and prudence in determining their tax obligations but nevertheless is unable to comply with those obligations. See, e.g., Treas. Reg. 301.6651-1(c)(1). Any abatement or non-assertion of penalties based on reasonable cause must generally conform to the Code and Regulations, as well other guidance provided by the Service.

The waiver of the additions to tax and penalties provided in the Voluntary Compliance Program cannot be made on the basis of reasonable cause. However, administrative waivers with respect to additions to tax and penalties may be allowed. Administrative waivers have generally been allowed when there has been recently enacted legislation that would warrant an abatement of certain additions to tax and penalties and when there has been a delay by the Service in publishing guidance or printing or mailing forms. In addition, administrative waivers of certain additions to tax and penalties have been allowed as warranted by other specific conditions. See I.R.M 20.1.1.3.2.2. For example, administrative waivers of certain additions to tax and penalties have been allowed in the Offshore Voluntary Compliance Initiative (Rev. Proc. 2003-11, 2003-4 I.R.B. 311), as well as the global settlement initiative provided in Announcement 2005-80 (2005-46 I.R.B. 967).

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With the exception of the section 6655 addition to tax for failure to pay corporate estimated income taxes, the additions to tax and penalties at issue in the Voluntary Compliance Program have otherwise been subject to administrative waivers by the Service in special circumstances. Accordingly, with the exception of the section 6655 addition to tax, there appears to be no legal impediment to the administrative waiver of the additions to tax and penalties proposed by the Voluntary Compliance Initiative.

Whether the section 6655 addition to tax can be waived under the Voluntary Compliance Program.

Section 6655 specifically imposes an addition to tax on corporate taxpayers for any underpayment of estimated corporate income tax. As noted above, unlike the other additions to tax, accuracy-related penalties, and fraud penalties found in Parts I and II of Chapter 68, Subchapter A, of the Code, section 6655 does not contain a reasonable cause exception (or allow for any other waiver, for that matter) for the addition to tax imposed on corporations for the failure to pay estimated income tax. Section 6655 only provides a de minimis exception to the addition to tax in the case where the tax shown on the return is less than \$500.

The imposition of the section 6655 addition to tax is analogous to interest. First, the addition to tax is computed by applying the underpayment rate established under section 6621 (Determination of Rate of Interest) to the amount of the underpayment of estimated corporate income tax. In addition, section 6601(h) specifically excludes the imposition of interest on a failure to pay estimated income tax under section 6655. Therefore, corporate taxpayers who underpay any required corporate estimated tax payment are only subject to the addition to tax under section 6655. The practical effect is that the section 6655 addition to tax with respect to an underpayment of corporate estimated income tax is in essence a substitute for underpayment interest imposed by section 6601.²

The rare occasions in which the Service has provided for an administrative waiver of the section 6655 addition to tax have been specifically limited to situations in which recently enacted legislation specifically provided for, or otherwise warranted, such treatment. That does not appear to be the basis with respect to the administrative waiver provided by the Voluntary Compliance Program. Given that there is no statutory or administrative basis for the waiver of the section 6655 addition to tax in this circumstance, we conclude that such a waiver is not permitted for purposes of the Voluntary Compliance Program.

Conclusions

With the exception of the section 6655 addition to tax, the additions to tax and penalties at issue in the Voluntary Compliance Program may be administratively waived. The

² It should be noted that it is the Service's long-standing policy that there is no statutory basis for the waiver or concession of interest. The proposed Voluntary Compliance Initiative accurately reflects this position.

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section 6655 addition to tax may not be administratively waived under in this circumstance.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call me or Timothy Sheppard at 622-4910 if you have any further questions.

By: _____

James C. Gibbons

Branch Chief

(Procedure & Administration, Branch 1)